IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 375 OF 2005

SHRI YOGRAJ N.SHANBAG AND 5 ORS., ...Petitioners

Versus

THE GOA URBAN COOPERATIVE BANK LTD., AND 10 ORS., ...Respondents

Mrs.A. Agni, Advocate for the Petitioners.
Mr. R. G. Ramani Advocate For Respondent No. 1

Coram:- D. D. SINHA, J.

Date:- 18th November, 2005

P.C.:

Heard Mrs. A. Agni, the learned counsel for the petitioners and Mr. R.G. Ramani, the learned counsel for the respondent No.1.

2. The Writ Petition is directed against the impugned Order dated 1.09.2005 passed by the Civil Judge S.D., whereby the application of the defendants seeking assistance of the Court to obtain summons for attendance of the witnesses named in the application is rejected.

3. The learned counsel for the petitioners contended that in the instant case though the petitioners did not submit the list of witnesses within the stipulated period contemplated under Order 16, Rule 1 of C.P.C., however the Court is entitled to permit a party to call as witnesses other than those whose names appear in the list referred to in sub-rule (1) if such party shows sufficient cause for the omission to mention the names of such witnesses in the said list. The learned counsel for the petitioners contended that in the instant case the petitioners submitted application dated 1.09.2005 praying for issuance of summons to the witnesses named in the application. It is contended that in the application sufficient cause

is shown why the names of these witnesses were not included in the list of witnesses contemplated under Order 16, rule 1 C.P.C. It is further contended that since sufficient cause was shown the Court ought to have allowed the application and issued summons to the above referred witnesses. In order to substantiate the contention reliance is placed on the judgment of the Apex Court reported in (1999) 3 S.C.C. 573 (Vidhyadhar v. Manikrao and another).

4. The learned counsel for the respondent No.1 on the other hand supported the impugned order and contended that in the application which was filed by the petitioners/defendants there is no cause whatsoever, much less sufficient cause is shown and therefore the trial Court was justified in rejecting the application.

5. I have considered the contentions canvassed by the respective counsel and perused the application. It is no doubt true that the Apex Court in the case of Vidhyadhar v. Manikrao cited supra, relied on the observations made by the Apex Court in the case of Mange Ram v. Brij Mohan reported in (1983) 4 S.C.C. 36 which reads thus :-

" There is no inner contradiction between sub-rule (1) of Rule 1 and Rule 1-A of Order XVI. Sub-rule (3) of Rule 1 of Order XVI confers a wider jurisdiction on the court to cater to a situation where the party has failed to name the witness in the list and yet the party is unable to produce him or her on his own under Rule 1-A and in such a situation the party of necessity has to seek the assistance of the court under sub-rule (3) to procure the presence of the witness and the court may if it is satisfied that the party has sufficient cause for the omission to mention the name of such witness in the list filed under sub-rule (1) of Rule 1, still extend its assistance for procuring the presence of such a witness by issuing a summons through the court or otherwise which ordinarily the court would not extend for procuring the attendance of a witness whose name is not shown in the list. Therefore, sub-rule (3) of Rule 1 and Rule 1-A operate in two different areas and cater to two different situations. "

6. In view of the above referred observations of the Apex Court, it is true that if sufficient cause is shown, the Court can show indulgence and is also entitled to issue summons. However, in the instant case, on perusal of the application dated 1st September, 2005, moved by the petitioners/defendants, there is absolutely no cause, much less sufficient cause shown, as required and in absence thereof, I am afraid the above referred Judgment of the Apex Court is of no help to the petitioners.

In the circumstances, no case is made out. Writ Petition is dismissed.

D. D. SINHA, J.

sl.